

ORDER OF THE MISSOURI BOARD OF PHARMACY
ISSUING JEREMY T. POPEK A LICENSE
SUBJECT TO PROBATION

Comes now the Missouri Board of Pharmacy ("Board") and issues its ORDER granting a PROBATED license, License Number 2007034316, to Jeremy T. Popek (hereinafter "Popek" or "Respondent"), pursuant to the provisions of Section 620.149, RSMo. As set forth in Section 620.149, RSMo, Popek may submit a written request for a hearing to the Administrative Hearing Commission seeking a review of the Board's decision to issue a probated license to Popek. Such written request must be submitted to the Administrative Hearing Commission within thirty (30) days of issuance of this Order. The written request should be addressed to the Administrative Hearing Commission, P.O. Box 1557, Truman Building Room 640, Jefferson City, MO 65102-1557. If no written request for review is received by the Administrative Hearing Commission within the thirty (30) day period, the right to seek review of the Board's decision shall be waived.

The disciplinary period shall become effective immediately upon issuance of Respondent's license as a pharmacist. Should Popek file a written request for review of this Order, the terms and conditions of the Order shall remain in force and effect unless and/or until such time as the Administrative Hearing Commission issues an order contrary to this Order.

FINDINGS OF FACT

1. The Missouri Board of Pharmacy (hereinafter "Board") is an agency of the State of Missouri created and established pursuant to Section 338.110, RSMo, for the purpose of executing and enforcing provisions of Chapter 338, RSMo.

2. Based on information received by the Board, pursuant to Section 338.055 RSMo, the Board concluded Jeremy Todd Popek engaged in conduct which would be grounds for disciplinary action by the Board.

3. Pursuant to the provisions of Section 620.149, RSMo, the Board hereby issues Pharmacist License Number 2007034316 to Jeremy Todd Popek in lieu of denial of Popek's request for a license to practice pharmacy in Missouri. License Number 2007034316 is issued subject to the terms and conditions set forth herein below.

4. Popek filed an application for licensed pharmacist examination with the Board on May 22, 2007.

5. On the application Popek stated that he had been convicted of a crime in a criminal prosecution in Missouri for an offense relating to drugs, narcotics, controlled substances or alcohol.

6. On the application Popek stated he had disciplinary action taken against him in another state, Nebraska.

7. On the application Popek stated that he had violated the drug laws of Missouri, another state or country, or of the United States.

8. On the application Popek stated that he had used in the last ten years drugs, controlled substances or alcoholic beverages to an extent that such use impaired his ability to perform the work of a pharmacist.

9. On the application Popek stated that he has been or is currently addicted to drugs, controlled substances or alcoholic beverages.

10. Attached to the application Popek included an explanation in which he stated that on August 8, 2000, in Springfield, Missouri, he had been driving a vehicle and had been stopped by a police officer because of a burned out headlamp. At that time he failed a field sobriety test. On April 5, 2001, he plead guilty to the offense of driving while intoxicated.

11. Attached to the application Popek included an explanation in which he stated that on December 27, 2002, he had been involved in a single vehicular accident and was tested for driving while intoxicated and later plead guilty to the offense of driving while intoxicated.

12. Attached to the application Popek included an explanation in which he stated that he had been dismissed from the University of Creighton School of Pharmacy in December 2004 and surrendered his Nebraska pharmacist intern license because of his history of driving while intoxicated and because of his history of substance abuse.

13. On August 11, 2005, Popek was readmitted to Creighton University School of Pharmacy subject to certain conditions.

14. On November 23, 2005, the state of Nebraska offered to issue to Popek a probationary pharmacist intern license subject to certain conditions. On December 8, 2005, Popek accepted that offer.

15. In July, 2007 Popek took and passed the examinations necessary to be licensed as a pharmacist in the state of Missouri.

CONCLUSIONS OF LAW

16. Popek's conduct as alleged above is cause for the Board to deny Popek a pharmacist license to practice pharmacy pursuant to Section 338.055.1 and .2, RSMo, which states in pertinent parts:

1. The board may refuse to issue any certificate of registration or authority, permit or license required pursuant to this chapter for one or any combination of causes stated in subsection 2 of this section. The board shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of his or her right to file a complaint with the administrative hearing commission as provided by chapter 621, RSMo.

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit or license for any one or any combination of the following causes:

* * *

(1) Use of any controlled substance, as defined in chapter 195, RSMo, or alcoholic beverage to an extent that such use impairs a person's ability to perform the work of any profession licensed or regulated by this chapter;

(2) The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated under this chapter, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed;

(8) Denial of licensure to an applicant or the holder of a license or other right to practice any profession regulated by this chapter granted by another state, territory, federal agency, or country whether or not voluntarily agreed by the licensee or applicant, including, but not limited to, surrender of the license on grounds for which denial or discipline is allowed in this state.

17. Section 620.149, RSMo, provides in pertinent part:

1. Whenever a board within the division of professional registration, including the division itself when so empowered, may refuse to issue a license for reasons which also serve as a basis for filing a complaint with the administrative hearing commission seeking disciplinary action against

a holder of a license, the board, as an alternative to refusing to issue a license, may, at its discretion, issue to an applicant a license subject to probation.

18. The Board hereby issues this ORDER in lieu of denial of Popek's request for a pharmacist license to practice pharmacy in Missouri pursuant to Section 620.149, RSMo.

ORDER

19. Based on the foregoing and in lieu of denying Jeremy T. Popek a license to practice as a pharmacist, the Board issues Jeremy T. Popek a license subject to PROBATION for three (3) years (hereinafter "disciplinary period"). The terms of discipline shall be:

A. Respondent shall keep the Board apprised of his current home and work addresses and telephone numbers. If at any time Respondent is employed by a temporary employment agency or maintains employment that requires frequent daily or weekly changes or work locations, he must provide the Board with all scheduled places of employment in writing prior to any scheduled work time.

B. Respondent shall pay all required fees for licensing to the Board and shall renew his license prior to October 31 of each licensing year.

C. Respondent shall comply with all provisions of Chapter 338, Chapter 195, and all applicable federal and state drug laws, rules and regulations and with all federal and state criminal laws. "State" here includes the State of Missouri and all other states and territories of the United States.

D. Respondent shall make himself available for personal interviews to be conducted by a member of the Board or the Board staff. Said meetings will be at the Board's discretion and may occur periodically during the disciplinary period. Respondent will be notified and given sufficient time to arrange these meetings.

E. Respondent's failure to comply with any condition of discipline set forth herein constitutes a violation of this Order/Agreement.

F. The parties to this Order/Agreement understand that the Board will maintain this Order/Agreement as an open record of the Board as provided in Chapters 338, 610 and 620, RSMo.

G. If, after disciplinary sanctions have been imposed, the licensee ceases to keep his Missouri license current or fails to keep the Board advised of his current place of

employment and residence, such periods shall not be deemed or taken as any part of the time of discipline so imposed.

H. Respondent shall provide all current and future pharmacy and drug distributor employers and/or pharmacist/manager-in-charges a copy of this disciplinary Order/Agreement within five (5) business days of the effective date of discipline or the beginning date of each employment. If at any time Respondent is employed by a temporary employment agency, he must provide each pharmacy and drug distributor employer and pharmacist/manager-in-charge a copy of this Order prior to or at the time of any scheduled work assignments.

I. Respondent shall not serve as a preceptor for interns.

J. Respondent shall not serve as a pharmacist-in-charge or in a supervisory capacity without prior approval of the Board.

K. Respondent shall submit to blood tests and/or periodic urinalysis, at Respondent's cost. The timing and/or scheduling for testing is within the Board's sole discretion.

L. Respondent shall report to the Board, on a preprinted form supplied by the Board office, once every six (6) months, beginning six (6) months after this Order/Agreement becomes effective, stating truthfully whether or not he has complied with all terms and conditions of his disciplinary Order.

M. Respondent shall complete an alcohol/drug abuse counseling and treatment program approved by the Board. Said program shall meet the requirements set forth in 4 CSR 220-2.170(6).

(1) Documentation required for counselor/program approval must be submitted to the Board office and Respondent's counselor/program must receive Board approval within three (3) months after the effective date of this Order/Agreement. Any unexpected or requested change in treatment counselor/program shall be submitted to the Board within ten (10) days of the change; and the program approval process must again be completed.

(2) Respondent shall, within six (6) weeks of the effective date of this Order/Agreement, undergo an evaluation for chemical dependency performed by a licensed or certified chemical dependency professional. Respondent shall cause the results of the evaluation to be mailed directly to the Missouri Board of

Pharmacy, P.O. Box 625, Jefferson City, Missouri 65102 within ten (10) days after the evaluation has been completed. Each evaluation report shall include the licensee's present state of impairment; a description of the tests performed and the results; discussion of relevant clinical interview findings/interpretations; specification of DSM IV diagnosis/es; appropriate treatment recommendations/plan; the beginning date of treatment; and an assessment for future prospects for recovery. If there is no diagnosis requiring treatment, this should be reported in the evaluation. Respondent shall follow any treatment recommendations made by that chemical dependency professional.

(3) Respondent shall provide a copy of this Order/Agreement to all chemical dependency professionals involved in Respondent's treatment, and all medical professionals issuing/renewing a controlled substance prescription to Respondent. Said disclosure shall be made before the evaluation required in Paragraph (2), before the issuance of any new prescriptions and, in the case of renewed/refilled prescriptions, disclosure shall be made within ten (10) days of the effective date of this Order/Agreement. Respondent shall simultaneously report to the Board that said disclosure has taken place.

(4) Respondent shall execute a limited medical release effective for the entire disciplinary period authorizing any chemical dependency professional or medical professional to release records and/or communicate with the Board, or its representative, regarding Respondent's treatment and/or counseling. Respondent shall not take any action to cancel this release. Respondent shall take all steps necessary to continue the release in effect and shall provide a new release when requested.

(5) Respondent shall cause a report of ongoing treatment evaluation to be submitted from the board-approved chemical dependency professional to the Board office on the schedule prescribed by 4 CSR 220-2.170(6)(E). The report shall be completed by the treating professional within four weeks prior to the date it is due. The report shall include an evaluation of Respondent's current progress and status related to the treatment recommendations/plan, and Respondent's current prognosis as well as revised treatment recommendations/plan.

(6) Respondent shall submit evidence of weekly (or counselor recommended) attendance at Alcoholics Anonymous, Narcotics Anonymous, or other support group meetings to the Board once every six (6) months throughout the disciplinary period. The documentation shall include the date, time, and place of each meeting and shall bear a signature or abbreviated signature of another person verifying attendance.

(7) If the treatment of Respondent is successfully completed at any time during the disciplinary period, Respondent shall cause the board-approved chemical dependency professional to submit a report of final evaluation/summary.

(8) Respondent shall abstain completely from the use or consumption of alcohol in any form, including over-the-counter medications and mouthwashes. The presence of any alcohol or alcohol metabolite whatsoever in a biological fluid sample shall constitute a violation of discipline.

(9) Respondent shall provide the Board office, within 10 days of the effective date of this Order/Agreement, a copy of all controlled substance prescriptions, dispensed or to be dispensed, in Respondent's possession on the effective date of discipline. The following information shall be provided: the prescription number, drug name, strength, dosage instructions, prescriber's name and address, the name and address of the pharmacy where the prescription was dispensed, date dispensed, number of refills available, and any other requested information concerning the prescription.

(10) Respondent shall abstain completely from the personal use or possession of any controlled substance or other drug for which a prescription is required unless use of the drug has been prescribed by a person licensed to prescribe such drug and with whom Respondent has a bona fide relationship as a patient. Upon request, Respondent shall execute a medical release authorizing the Board to access all records pertaining to Respondent's condition, treatment, and prescription maintained by the health care professional that prescribed the controlled substance. The presence of any controlled substance whatsoever in a biological fluid sample for which Respondent does not hold a valid prescription shall constitute a violation of

discipline. Respondent shall provide the Board with a copy of each prescription received, controlled or non-controlled, within five (5) days of Respondent's receipt of the prescription.

(11) Respondent shall inform any professional preparing a prescription for Respondent that Respondent is chemically dependent.

N. When the Well-being Committee created in 2007 by Senate Bill 195 in Section 338.380 is established, fully functional, and fully operational, Respondent is required to become a participant in the Committee's program for the remainder of the disciplinary period. The Board will notify Respondent when this occurs and Respondent will bear all the costs of the program.

20. Upon the expiration of the disciplinary period, Respondent's license as a pharmacist shall be fully restored if all other requirements of law have been satisfied; provided, however, that in the event the board determines that Respondent has violated any term or condition of this Order, the Board may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke, or otherwise lawfully discipline Respondent's pharmacy permit.

21. No order shall be entered by the board pursuant to the preceding paragraph of this Order without notice and an opportunity for a hearing before the Board in accordance with provisions of Chapter 536, RSMo.

22. If the Board determines that Respondent has violated a term or condition of this Order, which violation would be actionable in a proceeding before the Administrative Hearing Commission or the Circuit Court, the Board may elect to pursue any lawful remedies or procedures afforded it and is not bound by this Order in its determination of appropriate legal actions concerning that violation.

SO ORDERED EFFECTIVE this 5th day of November, 2007

MISSOURI BOARD OF PHARMACY


DEBRA C. RINGGENBERG, RPh
EXECUTIVE DIRECTOR